



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

---

**Two Hundred Fiftieth Meeting**  
**Tuesday**  
**August 3, 2004**

**Room 413**  
**State Capitol Building**  
**Pierre, South Dakota**

The two hundred fiftieth meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:04 a.m., August 3, 2004, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Eric Bogue, H. Paul Dennert and Royal "Mac" McCracken; and Representatives Richard Engels, Jean Hunhoff and Orville Smidt.

Staff members present included Doug Decker, Code Counsel, and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

### **Approval of Minutes**

*Representative Hunhoff moved, seconded by Senator Bogue, that the minutes of the June 3, 2004, meeting be approved. Motion prevailed unanimously on a voice vote.*

### **Staff Report**

**Mr. Decker** stated that the Board of Nursing would be appearing via telephone at 11:00 a.m.

### **Agenda Revisions**

**Senator McCracken** stated that the Department of Social Services would have only one rule packet as the other two packets had not been finalized and that the Department of Game, Fish and Parks' proposed rules regarding Bob's Landing Lakeside Use Area in Potter County had been withdrawn.

### **Rules Reviewed**

**Department of Transportation** - Amend speed zones in Hughes, Meade, and Perkins Counties and increase the permit fees for oversize or overweight vehicles.

**Mr. Bill Nevin** explained the proposed rules. **Captain Pat Fahey** explained the proposed changes to the overweight permit fees.

*Representative Engels moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Transportation. Motion prevailed unanimously on a voice vote.*

**Department of Agriculture: South Dakota Animal Industry Board** - Adopt and amend rules regarding the definition of carcass and contract hauler; provide for a regulating system for hauling of animal carcasses; and provide for identification and tracking of nondomestic animals permitted for possession in South Dakota.

**Dr. Sam Holland** reviewed the proposed rules.

*Representative Engels moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Agriculture: South Dakota Animal Industry Board. Motion prevailed unanimously on a voice vote.*

**Department of Revenue and Regulation: Division of Insurance** - Amend rules to update the dates of sources referenced; update general authority and law implemented references; add a definition of severe cognitive impairment and allow an additional exclusion in long-term care policies; and define terms used in statute.

**Mr. Randy Moses** reviewed the proposed rules.

*Representative Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a voice vote.*

**Department of Social Services: Office of Medical Services** - Amend rules to define terms, establish a system for reviewing and approving over-the-counter (OTC) items for coverage by the department, and amend the payment provisions for items dispensed by a pharmacy or PHS provider.

**Ms. Jill Wellhouse** reviewed the proposed rules. She stated that the proposed rules establish a mechanism for over-the-counter medications to be covered under Medicaid. She distributed a handout (**Document #1**) and stated that the OTC items to be covered initially would be omeprazole (Prilosec) and loratadine (Claritin). Any additions to the list would be posted on the department's Web site.

*Senator Bogue moved, seconded by Representative Engels, to approve the rules proposed by the Department of Social Services: Office of Medical Services. Motion prevailed unanimously on a voice vote.*

The following two packets of rules proposed by the Department of Social Services were withdrawn from the agenda.

**Department of Social Services: Office of Medical Services** - Amend rules to update and clarify certain rules, reference materials, and cross-references; clarify a hospital's DRG rate of reimbursement; establish a lower rate of reimbursement and claim requirements in a psychiatric unit; amend the list of services that are subject to payment by the department; require certain hospitals to care for Medicaid-eligible individuals; and revise admission criteria for an infant admitted to a neonatal intensive care unit.

**Department of Social Services: Office of Child Care Services** - Adopt rules relating to child care programs regulated by the department regarding child care facilities, family day care homes, group family day care homes, day care centers, environmental health standards, and before and after school care.

**Department of Environment and Natural Resources: Board of Minerals and Environment** - Amend rules to update existing hazardous waste rules by incorporating the federal rules by reference. This includes changes that have been made to the federal hazardous waste rules from July 1, 2002, to June 30, 2003. Changes to the rules include: establishing criteria for the use of certain materials in the production of zinc fertilizers, the establishment of treatment standards prior to disposing of certain metal-containing wastes, and the correction of technical errors in previously promulgated rules.

**Ms. Carrie Jacobson** reviewed the proposed rules regarding hazardous waste and distributed a Small Business Impact Statement (**Document #2**).

*Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed unanimously on a voice vote.*

**Department of Environment and Natural Resources: Board of Water Management** - Amend rules regarding the designated beneficial use classifications and water quality standards and the federal EPA requirements established for state surface water quality standards.

**Mr. Patrick Snyder** reviewed the proposed rules regarding surface water.

*Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water Management. Motion prevailed unanimously on a voice vote.*

**Department of Environment and Natural Resources: Board of Water Management** - Repeal two existing chapters of the state drinking water rules and update them by incorporating by reference the most recent published version of the Code of Federal Regulations for drinking water.

**Mr. Darron Busch** reviewed the proposed rules regarding drinking water.

*Senator McCracken moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water Management. Motion prevailed unanimously on a voice vote.*

**Department of Labor: Division of Labor and Management** - Update the Workers' Compensation fee schedule.

**Mr. James Marsh** reviewed the proposed rules.

*Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Labor: Division of Labor and Management. Motion prevailed unanimously on a voice vote.*

**Department of Health: Board of Pharmacy** - Adopt rules to establish criteria to register and regulate pharmacy technicians who assist pharmacists in the pharmacy and to update, reorganize and clarify language of current rules and regulations pertaining to pharmacy interns, support personnel, and reference materials.

**Mr. Dennis Jones** reviewed the proposed rules. He stated that the department does not have statutory authority to charge a late fee so that proposed rule was removed. Under current statutes, the board may only revoke a pharmacist's license; there is no authority to assess a penalty.

Senator Dennert stated that other departments have the authority to charge fees; perhaps the Department of Health should make a request to the Legislature.

*Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Health: Board of Pharmacy. Motion prevailed unanimously on a voice vote.*

**Department of Game, Fish and Parks** - Amend rules to provide that no person may have an uncased firearm in possession on the Lake Henry Fishing Access Area in Bon Homme County except any licensed hunter, using a shotgun with shotshells only, while hunting small game or wild turkey during an open season; provide that public water use restrictions indicated on buoys, as well as on signs, placed by the department must be obeyed by persons who enter, use, or occupy public waters; modify the West River Prairie Deer hunting season as follows: modify description of season dates for season extensions when hunters

are restricted to hunting of antlerless deer only, modify description of a hunting unit boundary line, and change number of resident and nonresident licenses for 1-tag and 2-tag deer and antlerless deer licenses; and provide release and/or reporting procedures and requirements for trappers who have trapped or snared pine marten, swift fox, fisher or river otter.

**Department of Game, Fish and Parks** - Amend rules relating to antelope, East River deer, National Wildlife Refuge deer, youth waterfowl, and early fall Canada goose hunting seasons, and modify the provisions of the Walk-In Program.

**Mr. Doug Hansen** reviewed the two proposed rule packets.

*Representative Engels moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a voice vote.*

**Department of Health: Board of Nursing** - Amend rules to update the approval of nursing education programs with a major revision of accepting national nursing accreditation in lieu of the every four year on-site visit by the Board of Nursing for the purpose of maintaining on-going approval; add a rule for the regulation of distance education programs in nursing; amend the time period for calculation of the 75% pass rate requirement for first time writers on the licensing exam; and amend rules related to retaking the licensing examination.

**Ms. Gloria Damgaard** appeared telephonically to review the proposed rules.

*Senator Dennert moved, seconded by Representative Engels, to approve the rules proposed by the Department of Health: Board of Nursing. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Public Safety: Office of Emergency Medical Services** - Adopt rules to establish cardiopulmonary directives for ambulance personnel.

**Mr. Bob Graff** reviewed the proposed rules. He stated that the proposed rules were the result of HB 1294. He distributed a brochure on the Comfort One program (**Document #3**). Mr. Graff explained that Comfort One is a program that has been copyrighted by the State of Montana and has been in existence for the past ten years. It allows a person to direct Emergency Medical Services (EMS) personnel to "do-not-resuscitate" in a medical emergency. He stated that for the form to be effective, it would have to be filed in Pierre with the Office of the Medical Services.

Senator Bogue expressed concern that the proposed form requires a physician's signature. He stated that was not part of HB 1294 (SDCL 34-12F-3). His concern related to the statutory authority for the rules to implement the cardiopulmonary resuscitation directive. The statute did not specifically authorize the requirement that the directive include a physician's

signature. Thus the rule requiring a physician's signature may have exceeded the department's statutory authority.

Discussion followed on living wills, drivers licenses notations, and the need for a physician's signature on the proposed form.

*Senator Bogue moved, seconded by Senator McCracken, to send the rules proposed by the Department of Public Safety: Office of Emergency Medical Services back to a prior stage for further clarification. Motion prevailed on a roll call vote, with 5 ayes, 1 nay. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and McCracken. Voting nay: Smidt.*

### **Next Meeting Date**

Following discussion of the letter received from the Secretary of State (**Document #4**), and information provided by the Department of Game, Fish and Parks, the chair set the next committee meeting for Friday, September 3, 2004. The meeting will be held telephonically to hear rules from the Secretary of State and the Department of Game, Fish, and Parks, and others, if needed.

### **Committee Comments**

Senator McCracken expressed his appreciation to those agencies providing a copy of the Small Business Impact Statement.

Senator Bogue expressed his appreciation to those agencies that have been providing their information three-hole punched.

*Representative Hunhoff moved, seconded by Senator Bogue, that the meeting adjourn. Motion prevailed unanimously on a voice vote.*

The meeting adjourned at 11:30 a.m.



All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage (<http://legis.state.sd.us>). Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at MyLRC (<http://legis.state.sd.us/mylrc/index.cfm>).